

REMARKS

Interview with the Examiner

The applicant wishes to thank the Examiner for the courtesies extended to applicant and applicant's counsel during the personal interview held on November 16, 2006. Details of the interview are referred to below.

Objections to Oath

The Examiner has objected to the oath because it fails to identify at least one error which is relied upon to support the reissue application. Applicant neglected to check the box indicating that the basis for the reissue was due to the patentees claiming less than they had a right to claim in the patent. However, such basis is implicit with the statement at the bottom of page one of the Declaration (re broadened claims) that clearly indicated that the error upon which the reissue application was based was due to the patentees claiming less than they had a right to claim. Applicant has filed concurrently herewith a new Declaration with at least one box checked indicating that they believed the original patent to be wholly or partly inoperative or invalid because they had claimed less in the patent than they had a right to claim.

The Examiner has also objected to the application under 37 C.F.R. §1.172(a) as lacking a written consent of all assignees owning an undivided interest in the patent. In applicant's Response To Notice To File Missing Parts To Reissue Application, applicants filed a Consent Of Assignee To Reissue in which Acantha LLC is identified as the assignee. The Assignment, which was recorded on Reel 012967, Frame 0893, indicates that Acantha is the owner of the entire right, title and interest to the application. David Talaber is Managing Member of the assignee and is empowered to

sign the consent which was filed as indicated in the attached copy of the Articles of Incorporation for Acantha LLC (See Article 2 of the Articles of Incorporation which is attached hereto).

Objection to Claim 39

The Examiner has objected to claim 39 because there was no indication from which claim the claim depended. In response applicant has amended claim 39 to indicate that it depends from claim 37.

Rejections under 35 U.S.C. §112(2)

The Examiner rejected claims 52-53, 59, and 103-105 under 35 U.S.C. §112(2) as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention and specifically that the expressions "the stopping member" and the "the biased stopping member" lack antecedent basis.

Applicant has amended claims 52, 59 and 103 to obviate the indicated rejection.

Rejections under 35 U.S.C. §102 Based On Errico et al.

The Examiner has rejected claims 29-39, 41-48, 50-51, 60-71, 73 and 89-105 under 35 U.S.C. §102(b) as being anticipated by Errico et al.(U.S. Pat. No. 5,876,402). During the aforesaid interview, the Examiner contended that Errico et al. discloses a second bore passageway portion configured to conform to and retain the enlarged portion or head of the securing component. The Examiner expressed the belief that the claim language with respect to the bore was not specific enough to overcome the Errico et al. reference. However, as noted by the applicants during the interview the amended claims require the posterior bore portion to have a posterior surface configured to engage the enlarged integral portion of a securing member and to retain the enlarged

integral portion of the securing member within the posterior bore portion. The transverse dimensions of applicant's posterior bore portion in part (e.g. posterior opening) is smaller than the transverse dimensions of the enlarged integral portion or head of the securing member. Errico et al. has an enlarged integral portion (122) but it is not larger than the posterior opening of the bore (hole 110) and it never engages a posterior surface of the posterior bore portion. The posterior surface of the posterior bore portion of Errico engages the outer surface of coupling element (132) not the integral head (122). The integral head (122) of Errico et al. is disposed within the interior of the coupling element. The coupling element (132) of Errico et al. contacts the posterior surface of the posterior bore portion but it is not integral with the head (122) or the shaft (126) so it is not an integral part of the screw or securing member (120). Therefore, the Errico et al. reference does not teach every feature of the claimed invention and cannot anticipate the rejected claims.

During the interview, the Examiner indicated that the location and direction of the bore in the proposed amended claims is not clear and contended that such lack of clarity in the claims allowed the application of Errico et al. against the claims. While applicant disagrees with the Examiner, applicants have amended each of the independent claims to clarify the location and direction of the bore. Specifically, the claims require the attachment member or stabilizing element to have an anterior surface, a posterior surface and a bore that extends from the anterior surface to the posterior surface. The Examiner indicated that the use of the terms "anterior" and "posterior" might not be definitive. However, these terms are common terms with respect to orthopedic devices and their meaning is clear in the specification.

With these amendments, applicant believes that the rejection of the above claims based on Errico et al. has been overcome.

Rejections under 35 U.S.C. §102 Based On Estes

The Examiner has rejected claims 60-67, 73-79 and 89-95 under 35 U.S.C. §102(e) as being anticipated by Estes (U.S. Pat. No. 5,578,034). The device described in the Estes reference has a securing member with an integral head, but the head is retained in the anterior bore portion not the posterior bore portion of the attachment member as required by the rejected claims. The Estes device does not have the structure required by these claims, so this reference cannot anticipate these claims.

Rejection Under 35 U.S.C. §103(a)

The Examiner rejected claim 49 contending that those skilled in the art would find the use of titanium or superelastic materials as being obvious. However, claim 49 depends from claim 37 which as discussed above should be in allowable condition based upon the amendments made to this claim. Claim 49 should likewise be allowable.

New Prior Art


Applicant wishes to bring to the attention of the Examiner for consideration the references listed on the attached PTO-1449. These references were brought to applicants attention after receipt of the Office Action mailed on September 8, 2006. Applicant have carefully reviewed these references and believe that they do not appear to be any more pertinent than the references already considered in this application. Enclosed herewith are copies of the foreign patent documents listed in the attached PTO-1449.

Conclusions

Applicant notes with appreciation the Examiner's allowance of claims 1-28, 51, 54-58 and 74-88 and the indication that claims 40 and 72 are directed to patentable subject matter. Applicant has amended some of the allowed claims to clarify and simplify the language. Moreover, applicant has converted independent claims 60 and 102 to depend from claim 29 and have cancelled duplicate claims (claims 60-61 and 80-83) to reduce the number of claims to be examined. Applicant believes that all of the presently pending claims are directed to patentable subject matter. Reconsideration of the pending claims and an early allowance thereof are earnestly solicited.

Pursuant to 37 C.F.R. §1.173(c) applicant has attached hereto a chart listing the status and support for the claims and amendments thereto.

Respectfully submitted:

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